

E-FILED 3/1/07

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

YUMIN LIU AND KEVIN T. DAI,

Plaintiffs,

v.

ALBERTO GONZALES, et al.,

Defendants.

Case Number C 07-00883 RS

ORDER TO SHOW CAUSE

On February 12, 2007, plaintiff Kevin T. Dai and his parent, Yumin Liu, filed a “Complaint For Writ in the Nature of Mandamus” against defendant Michael Chertoff, Secretary of the Department of Homeland Security, and other government officials in their official capacities. Plaintiffs allege defendants have failed to process Dai’s I-485 application in a timely manner, apparently as a result of delays in obtaining a completed background check clearance from the Federal Bureau of Investigation. Plaintiffs allege that, as a result, defendants have violated the Administrative Procedures Act, 5 U.S.C § 701 et. seq. Plaintiffs request that this Court enter an order compelling defendants to act upon Dai’s application. Good cause

1 appearing, IT IS HEREBY ORDERED as follows:

2 (1) The Clerk of the Court shall serve a copy of the complaint and a copy of this
3 Order upon counsel for Defendants, the Office of the United States Attorney. The Clerk of the
4 Court also shall serve a copy of this Order upon Plaintiffs' counsel.

5 (2) Defendants shall, within sixty (60) days after receiving service of the complaint,
6 file and serve upon Plaintiffs an answer, showing cause why the relief prayed for should not be
7 granted. At the time the answer is filed, Defendants shall lodge with the Court all records
8 relevant to a determination of the issues presented by the complaint. If Defendants contend that
9 Plaintiffs have failed to exhaust administrative remedies as to any ground for relief asserted in
10 the complaint, Defendants shall specify what administrative remedy remains available to
11 Plaintiffs. If Defendants waive or concede the issue of exhaustion, Defendants shall so state in
12 their answer.

13 (3) Plaintiffs may file a response to the matters raised in the answer within twenty
14 (20) days after receiving the answer.

15 (4) Unless otherwise ordered by the Court, the matter will be deemed submitted upon
16 the filing of the response or upon the expiration of time to file a response.

17 (5) No later than the time their respective responses hereunder are due, the parties
18 shall make their determination regarding the issue of consent to the jurisdiction of the Magistrate
19 Judge and file the appropriate form. In the event any party declines to consent to the jurisdiction
20 of the Magistrate Judge, this action will be reassigned to a District Judge for further proceedings.
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1 (6) The Order Setting Initial Case Management Conference and ADR deadlines dated
2 February 12, 2007, in this action is hereby VACATED.

3 IT IS SO ORDERED.

4 Dated: 3/1/07


RICHARD SEEBORG
United States Magistrate Judge